IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. TIMOTHY DONALD KOONS, Defendant.	No. CR00-3041-MWB **ORDER REGARDING MAGISTRATE'S REPORT AND RECOMMENDATION CONCERNING DEFENDANT'S MOTION TO SUPPRESS**

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I. INTRODUCTION AND BACKGROUND

On September 28, 2000, a three-count indictment was returned against defendant Timothy Donald Koons, charging him with possessing methamphetamine with intent to distribute within 1000 feet of a public playground, in violation of 21 U.S.C. §§ 841 (a)(1) and 860(a), possession of firearms by an unlawful user of controlled substances, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2), and forfeiture of certain property, pursuant to 21 U.S.C. § 853(p).

On November 17, 2000, defendant Koons filed a motion to suppress (#25). In his motion, defendant Koons seeks to suppress evidence seized from his residence pursuant to a search warrant issued by an Iowa state magistrate. He also seeks to suppress statements he made to the police at the time of the search and following his arrest. Defendant Koons's motion to suppress was referred to United States Magistrate Judge Paul A. Zoss, pursuant to 28 U.S.C. § 636(b), for the purpose of holding an evidentiary hearing and preparing a Report and Recommendation on the motion. On February 23, 2001, an evidentiary hearing was held regarding defendant Koons's motion to suppress. On March 12, 2001, Judge Zoss filed a Report and Recommendation in which he recommends that defendant Koons's motion to suppress be granted in part and denied in part. On March 29, 2001, the government filed both factual objections to Judge Zoss's Report and Recommendation, and objections to the

legal conclusions reached by Judge Zoss in his Report and Recommendation.

After obtaining an extension of time, defendant Koons filed a response to the government's objections on April 19, 2001, but did not file objections to Judge Zoss's Report and Recommendation.

II. LEGAL ANALYSIS

A. Standard Of Review

Pursuant to statute, this court's standard of review for a magistrate judge's report and recommendation is as follows:

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's report and recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

> The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

The government has filed objections to Judge Zoss's Report and Recommendation. The court, therefore, undertakes the necessary review of Judge Zoss's recommended disposition of defendant Koons's motion.

B. Factual Objections

Many of the government's objections to Judge Zoss's factual findings are not the factual findings actually made by Judge Zoss but to the absence of additional factual findings that the government believes are significant. The court will address each of the government's factual objections seriatim.

1. The Government's First Factual Objection

First, the government asserts that defendant Koons did not initially object to the introduction of the affidavit of the issuing state magistrate on the grounds that it violated the confrontation clause. The government further contends that Judge Zoss initially raised the confrontation clause issue and sustained defendant Koons's objection to the affidavit on that ground. Both of these factual assertions by the government are correct. Tr. at 49-51. Therefore, this factual objection is sustained.

2. The Government's Second Factual Objection

The government next contends that the report and recommendation does not mention Officer Paul Budach's self-professed reason for not including in the search warrant application Albert Bahr's name as the source of the information that defendant Koons was dealing drugs. The government also asserts that "the Report did not include Officer Budach's reasons for investigating this hearsay information in an attempt to corroborate it." Gov't Objections at p. 3. This factual objection is sustained in part and denied in part. While the report and recommendation does not mention Officer Budach's self-professed reason for not including Bahr's name in the search warrant application, Judge Zoss did state in the report and recommendation that Officer Budach conducted the "trash pull" at Koons's residence in response to the information he had received that Koons was dealing drugs. Report and Recommendation at p. 3.

3. The Government's Third Factual Objection

The government also asserts that Judge Zoss, and not defendant Koons, raised the

issue of the "foilies" not being included in the search warrant application. This factual assertion by the government is correct. Thus, this factual objection is sustained.

4. The Government's Fourth Factual Objection

The government further argues that the report and recommendation does not mention that defendant Koons did not present any evidence nor allege that Officer Budach deliberately included false information or omitted information from the search warrant application such that would require a *Franks* hearing. *See Franks v. Delaware*, 438 U.S. 154 (1978). This factual assertion by the government is correct. Defendant Koons has not moved to suppress evidence found in a search of his residence on the grounds that the affidavit used to obtain the search warrant in this case contains intentional misstatements, but rather asserts that probable cause for issuance of the warrant did not exist. Therefore, this factual objection is sustained.

5. The Government's Fifth Factual Objection

The government also contends that the report and recommendation does not mention that Officer Budach failed to include in the search warrant application defendant Koons's 1986 conviction for possession of marijuana because he overlooked it. This factual assertion by the government is also correct. Tr. at p.21. Thus, this factual objection is sustained.

6. The Government's Sixth Factual Objection

The government contends that the report and recommendation does not mention that a third reason Detective Van Langen patted down defendant Koons prior to permitting him to use the restroom was that the search warrant specifically authorized a search of defendant Koons's person. This factual assertion by the government is also correct. Tr. at p.64. Thus, this factual objection is sustained.

7. The Government's Seventh Factual Objection

The government next asserts that the report and recommendation does not mention

how it was determined that Officer Budach is defendant Koons's cousin. This factual assertion by the government is partially correct. Officer Budach mentioned during direct examination that defendant Koons's stated that he was more comfortable speaking with him because Koons was his cousin. Tr. at p.37. This exchange was mentioned in the report and recommendation. Report and Recommendation at p.9. Then, through questioning by Judge Zoss, Officer Budach explained that his mother and defendant Koons's mother are sisters. Tr. at p.38. Thus, this factual objection is sustained in part and denied in part.

8. The Government's Eighth Factual Objection

The government asserts that the report and recommendation does not mention that the independent testing, by defendant Koons, of the marijuana stems found in the trash at his residence was conducted pursuant to court order. This factual assertion by the government is also correct. Tr. at p.48. Thus, this factual objection is sustained.

C. Objections Regarding Conclusions Of Law

1. Standard of Review

Initially, the government contends that Judge Zoss erred in failing to set forth the appropriate standard of review to be employed by a court in reviewing an issuing magistrate's finding of probable cause for issuance of a search warrant. A reviewing court "must determine whether, under the 'totality-of-the-circumstances analysis' set forth in *Illinois v. Gates*, 462 U.S. 213, 238 (1983), the issuing magistrate had a "substantial basis" for concluding that there was probable cause." *United States v. Fulgham*, 143 F.3d 399, 400 (8th Cir. 1998); *accord United States v. Reinholz*, ___F.3d___, 2001 WL 300560, at *7 (8th Cir. Mar. 29, 2001). In reviewing the sufficiency of an affidavit supporting a search warrant, "great deference is accorded the issuing judicial officer." *Fulgham*, 143 F.3d at 401; *accord United States v. Day*, 949 F.2d 973, 977 (8th Cir. 1991). A reviewing court's assessment of probable cause is "from the viewpoint of a reasonably prudent police officer, *United States v. Peep*, 490 F.2d 903, 906 (8th Cir. 1974), acting in the circumstances of the

particular case, *United States v. Regan*, 525 F.2d 1151, 1155 (8th Cir. 1975)." *Reinholz*, ___F.3d___, 2001 WL 300560, at *7. The court concludes that Judge Zoss applied the correct standard of review because the report and recommendation quotes extensively from the *Gates* decision and also cites to the Eighth Circuit Court of Appeals's decision in *Fulgham*. Thus, this objection is denied.

2. Leon Good-Faith Exception

The government objects also to Judge Zoss's analysis of the warrant application on the ground that the search warrant application contained sufficient allegations of evidence to support a finding that the issuing magistrate had a substantial basis for concluding that probable cause existed. *See Gates*, 462 U.S. at 238-239. If the good-faith exception outlined in *United States v. Leon*, 468 U.S. 897, 922-23 (1984), applies, the court need not reach the question of probable cause. *See United States v. Loe*, ___ F.3d ___, 2001 WL 388098, at *5 (5th Cir. Apr. 2001) (holding that "[i]f the good-faith exception applies, we need not examine whether the warrant was supported by probable cause."); *United States v. Davis*, 226 F.3d 346, 351 (5th Cir. 2000) ("Only if we conclude that the good-faith exception does not apply do we proceed to ask whether the magistrate who issued the warrant had a substantial basis for believing there was probable cause for the search."). The court concludes that it need not rule on the validity of the search warrant here because, assuming *arguendo* that the search warrant application did not provide the issuing magistrate with a substantial basis for concluding that probable cause existed, the *Leon* good-faith exception is applicable in this case.

If, despite the lack of probable cause in the search warrant application, law enforcement officers executed the warrant in good-faith reliance as to its validity, then suppression of the evidence gleaned from the search would not be required. *See United States v. Leon*, 468 U.S. 897, 923 (1984); *United States v. Johnson*, 78 F.3d 1258, 1261 (8th Cir.), *cert. denied*, 519 U.S. 889 (1996). Thus, "[t]he Court in *Leon* created the good-faith

exception to the exclusionary rule." *Johnson*, 78 F.3d at, 1261. In *Leon*, the United States Supreme Court held that evidence seized by police officers acting in objectively reasonable good-faith reliance on a search warrant issued by a neutral and detached magistrate, but ultimately found to be unsupported by probable cause, need not be suppressed. *Leon*, 468 U.S. at 922-25. The Supreme Court noted the division of authority between the judicial officer, whose duty includes "issu[ing] a warrant comporting in form with the requirements of the Fourth Amendment," and the police officer who, in the ordinary case, "cannot be expected to question the magistrate's . . . judgment that the form of the warrant is technically sufficient." *Id.* at 921.

The Supreme Court explained that the exclusionary rule is a deterrent measure designed to ensure compliance with the Fourth Amendment. *See id.* at 906; *accord Johnson*, 78 F.3d at 1261 ("The purpose of the exclusionary rule is to deter police misconduct."); *United States v. Moore*, 956 F.2d 843, 847 (8th Cir. 1992) ("'[T]he purpose of the exclusionary rule is to deter unlawful police conduct,'" quoting *United States v. Peltier*, 422 U.S. 531, 542 (1975)). The Court believed that, where police obtain evidence in reliance on a search warrant that is subsequently found to be defective, "there is no police illegality and thus nothing to deter." *Leon*, 468 U.S. at 921. Hence, exclusion of seized evidence under those conditions serves no salutary purpose, because that sanction "cannot logically contribute to the deterrence of Fourth Amendment violations." *Id.* The Supreme Court concluded that "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Id.*

Although *Leon* weakened the exclusionary rule, the Supreme Court did not eliminate the exclusionary rule. The Supreme Court acknowledged that suppression would continue to be appropriate in those situations where, notwithstanding the issuance of a warrant, "the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Id.* at 919. The Supreme

Court identified four circumstances in which the exclusionary rule is still appropriate:

> Suppression . . . remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his disregard of the truth. . . . The exception we recognize today will also not apply in cases where the issuing magistrate wholly abandoned his judicial role . . .; in such circumstances, no reasonably well trained officer should rely on the warrant. Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." . . . Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient--i.e., in failing to particularize the place to be searched or the things to be seized--that the executing officers cannot reasonably presume it to be valid.

Id. at 923 (citations omitted); *see United States v. Marion*, ___F.3d___, 2001 WL 96090, at *3 (8th Cir. Feb. 6, 2001)(identifying these four circumstances from *Leon*); *United States v. Weeks*, 160 F.3d 1210, 1211 (8th Cir. 1998) (same); *United States v. Taylor*, 119 F.3d 625, 628 (8th Cir.) (same), *cert. denied*, 522 U.S. 962 (1997); *United States v. Phillips*, 88 F.3d 582, 586 (8th Cir. 1994) (same); *Johnson*, 78 F.3d at 1261 (same). However, the ultimate question under *Leon* is whether officers "had an objectively reasonable basis to believe they were complying with [applicable law] and the Fourth Amendment." *Moore*, 956 F.2d at 848; *see also United States v. Fletcher*, 91 F.3d 48, 51 (8th Cir. 1996) (the "relevant inquiry" was whether the facts surrounding the case were "close enough to the line of validity" that the police officers were entitled to believe their conduct complied with the law). The government bears the burden of establishing that the good-faith exception to the federal exclusionary rule should apply in a particular case. *Id.* at 924.

Judge Zoss found one of the four *Leon* exceptions applicable here: he found that the executing agents' reliance on the issuing state magistrate's determination of probable cause

was entirely unreasonable because the affidavit contained so few indicia of probable cause to believe that evidence of criminal activity would be found there. Report and Recommendation at p.22. Here, assuming *arguendo*, that probable cause did not exist which would permit issuance of the search warrant, the court concludes that the executing law enforcement officers held an objectively reasonable belief that there was probable cause to search the premises at issue in this case. Officer Budach included in his warrant applications information supplied to the county attorney by an anonymous source that defendant Koons was engaged in drug trafficking. The information provided by the anonymous source to the county attorney was combined with the fact that a trash pull from Koons's residence resulted in the discovery of marijuana stems at that location. The court finds that the officers' reliance on the search warrant was not wholly unwarranted but was objectively reasonable given this set of facts. In other words, the court finds that the officers could in good faith believe, under the facts as they existed at the time, that they had presented sufficient factual allegations to the state magistrate for him to conclude that there was probable cause for issuance of the search warrant in this case. *See Reinholz*, ___F.3d___, 2001 WL 300560, at *7 (holding that search warrant application stated sufficient facts to support finding of probable cause that illegal drugs were present at defendants' residence where application stated that law enforcement officers had found during recent search of residence's trash 20 syringes with methamphetamine residue, brass pipe with cocaine residue, and documents identifying defendants as occupants of residence); *United States v. Gonzales-Rodriguez*, 239 F.3d 948, (8th Cir. 2001) (holding that information from a reliable confidential informant to the police that defendant was dealing drugs when combined with the discovery of drug paraphernalia and drug residue during search of defendant's trash established probable cause for issuance of a search warrant for defendant's residence); *United States v. Hohn*, 8 F.3d 1301 (8th Cir. 1993) (holding that search warrant was supported by probable cause where application contained averments that

police had received information from a confidential informant implicating defendant as a methamphetamine dealer distributing from his home, and the police found during search of defendant's curbside garbage, among other drug-related items, a zip-lock bag and sno-seals). Therefore, the court concludes that the *Leon* good-faith exception is applicable here.

3. Defendant's Statements

The government further objects to Judge Zoss's conclusion that statements made by defendant Koons during and after the search of his residence must be suppressed as the fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 485-86 (1963). Because the court has concluded that the *Leon* good-faith exception is applicable here, the court must take up defendant Koons's assertion that his statements to the police were involuntary and that some of his statements were obtained without his having been informed of his constitutional rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966).

a. Application of Miranda decision

Pursuant to the *Miranda* decision, statements made by an individual during a custodial interrogation are inadmissible unless they were preceded by a series of warnings concerning the individual's right against self-incrimination and his right to counsel. The *Miranda* safeguards only apply to one "who is subjected to custodial police interrogation." *Id.* at 439. Thus, "custody" and "interrogation" are the two prerequisites that trigger the need for *Miranda* warnings. *See Illinois v. Perkins*, 496 U.S. 292, 296 (1990) ("It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation"); *United States v. Cordova*, 990 F.2d 1031, 1037 (8th Cir.) ("The reading of Miranda rights is required "whenever a suspect is (1) interrogated (2) while in custody.'") (quoting *United States v. Griffin*, 922 F.2d 1343, 1347 (8th Cir. 1990)), *cert. denied*, 510 U.S. 870 (1993); *United States v. Caldwell*, 954 F.2d 496, 499 (8th Cir.) ("*Miranda* warnings are required only when a suspect is in custody and is about to be

interrogated."), *cert. denied,* 506 U.S. 819 (1992).

Custody for purposes of *Miranda* involves a situation in which the defendant is "deprived of his freedom of action in any significant way." *Beckwith v. United States*, 425 U.S. 341, 347 (1976) (quoting *Miranda*, 384 U.S. at 444); *see also Oregon v. Mathiason*, 429 U.S. 492, 494 (1977). The Supreme Court has stated that "the ultimate inquiry [in determining whether an individual is in custody] is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Mathiason*, 429 U.S. at 495). In determining whether a person is in custody, the court must view the totality of the circumstances, *United States v. Hanson*, 237 F.3d 961, 963 (8th Cir. 2001); *United States v. Helmel*, 769 F.2d 1306, 1320 (8th Cir. 1985), and "how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). As the Eighth Circuit Court of Appeals instructed in *Hanson*: "[u]ltimately, however, the determination of custody 'depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.'" *Hanson*, 237 F.3d at 963 (quoting *Stansbury v. California*, 511 U.S. 318, 323 (1994)). In making this assessment, courts have considered a number of factors, including:

> "(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest;
> (2) whether the suspect possessed unrestrained freedom of movement during questioning;
> (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions;
> (4) whether strong arm tactics or deceptive stratagems were employed during questioning;
> (5) whether the atmosphere of the questioning was police

> dominated; or,
> (6) whether the suspect was placed under arrest at the termination of the questioning.

United States v. Chamberlain, 163 F.3d 499, 502 (8th Cir. 1998) (quoting *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990)); *United States v. Brown*, 990 F.2d 397, 399 (8th Cir. 1993) (same). "The presence of the first three indicia tends to mitigate the existence of custody at the time of questioning; the presence of the last three indicia aggravate the existence of custody." *Brown*, 990 F.2d at 399.

b. Point of custody

Applying these standards here, it is uncontested that defendant Koons came to be in custody at the time of his formal arrest. The question is whether Koons came to be in custody before that point. When Koons entered his house, he and Officer Van Langen sat at a table in the dining room while Officer Budach commenced conducting a search of the residence. In response to the officers questions about whether there were illegal drugs in the house, Koons told the officers that there was a bag of marijuana under the mattress in the main bedroom. It is plain that Koons was not in custody at the time that he made this statement. First, Koons was in familiar surroundings: his own home. Although not dispositive, this fact weighs against a finding that defendant Koons was in custody. Unquestionably, one's home is a far less coercive environment in which to speak to law enforcement agents than, for example, a police station. *See, e.g., United States v. Salvo*, 133 F.3d 943, 950-53 (6th Cir.) (holding that defendant questioned at his dormitory computer room was not in custody), *cert. denied*, 523 U.S. 1122 (1998); *United States v. Mitchell*, 966 F.2d 92, 99 (2d Cir. 1992) ("It is similarly clear that [defendant] was not in custody during his interview. The entire interview occurred in the familiar surroundings of [defendant's] home"); *United States v. Gregory*, 891 F.2d 732, 735 (9th Cir. 1989) (holding that defendant interviewed in his home was not in custody); *United States v. Dornhofer*, 859 F.2d 1195, 1200 (4th Cir. 1988) (defendant questioned in his apartment during police search

for pornography not "in custody"), *cert. denied*, 490 U.S. 1005 (1989); *United States v. Rakowski*, 714 F. Supp. 1324, 1334 (D. Vt. 1987) ("Lower courts . . . almost universally hold that questioning in a suspect's home is not custodial because individuals in a familiar environment are less likely to be intimidated by law enforcement officers"). Moreover, the record shows that up through that point in time, defendant Koons was never handcuffed or frisked, or told that he was under arrest. In short, under all the circumstances, it cannot be said that, when viewed objectively, any significant restraints were imposed on defendant's freedom so as to transform his conversation with the officers into a custodial interrogation. Thus, there was no need to inform Koons of his *Miranda* rights up through this juncture and there is no basis upon which to suppress his statement about the drugs in the bedroom.

The court, however, concludes that the point of custody was reached when, during a search of Koons's person, Officer Van Langen found a plastic bag containing 15 grams of methamphetamine and an empty pen casing which had methamphetamine residue on the outside that indicated that it had been used to smoke methamphetamine. Upon the police finding the drugs on him, a reasonable person in defendant Koons's position would not have felt free to leave the scene. *See United States v. Moore*, 104 F.3d 377, 388 (D.C. Cir. 1997) (holding that after the drugs and guns were found in car's engine compartment no reasonable person would feel free to leave the scene).

c. Interrogation

Defendant Koons subsequently told Officer Van Langen that he had a problem with methamphetamine use and also told Officer Van Langen that he had taken some methamphetamine a few hours before the search had started. Thus, the court turns to the issue of whether defendant Koons was subjected to "interrogation" by Officer Van Langen for *Miranda* purposes. In *Miranda*, 384 U.S. at 444, the United States Supreme Court stated that "interrogation" means "questioning initiated by law enforcement officers." The

Court later expanded that definition to include "either express questioning or . . . any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the [defendant]." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980).

Here, the court finds in this case that no *Miranda* warnings were required because, even though defendant Koons may have been in custody, his statements to Officer Van Langen were not the product of any interrogation. Rather, defendant Koons's statements were voluntary and spontaneous; the statements were not made in response to words or actions by Officer Van Langen that were reasonably likely to elicit an incriminating response. *See Innis*, 446 U.S. at 301.

d. Statements after formal arrest

After being formally arrested, defendant Koons asked the officers why Cindy's name was on the search warrant. In response to being told by the officers that the reason her name was on the warrant was because she lived there, defendant Koons volunteered that she no longer lived there and that all the drugs the officers had found at the residence were his. The court finds that defendant Koons's statements in response to the officers answer were not "the product of words or actions on the part of the police that they should have known were reasonably likely to elicit an incriminating response." *Id.* at 300-01. Instead, the court finds that defendant Koons voluntarily offered information to the officers about the drugs. "Miranda has no application to statements . . . that are voluntarily offered and are not a product of either express questioning or any police practice reasonably likely to evoke an incriminating response." *Griffin*, 922 F.2d at 1357 (citing *United States v. McGauley*, 786 F.2d 888, 891 (8th Cir. 1986); *United States v. Webster*, 769 F.2d 487, 492 (8th Cir.1985)). Defendant Koons's statements were not given in response to any questioning

by the officers.[1]

Finally, after defendant Koons was booked, he was advised of his *Miranda* rights by Officer Budach. After signing a waiver of rights form, defendant Koons was interviewed by Officer Budach at which time Koons made several admissions. On August 11, 2001, Koons called Officer Budach from jail and asked if they could have a conversation "cousin to cousin." Although Officer Budach told defendant Koons that he should consult with legal counsel before making any further statements, defendant Koons proceeded to make several admissions. Because defendant Koons was advised of his constitutional rights, as required by the *Miranda* decision, prior to giving these statements, the court finds no *Miranda* violation here.

e. Voluntariness of statements

Defendant Koons asserts a breach of his Fifth Amendment right to be free from compelled or coerced self-incrimination. The government bears the burden of showing, by a preponderance of the evidence, that his statements were made voluntarily. *Lego v. Twomey*, 404 U.S. 477, 489 (1972). The court finds that these interviews were conducted in a non-threatening environment, in a civil manner free of displays of force, intimidation, or strong-arm tactics. Having found no evidence of coercive police conduct, this aspect of defendant Koons's motion cannot be sustained. The court further concludes that the preponderance of the evidence establishes that defendant Koons's statements were not compelled or coerced, but rather that they were given freely, voluntarily and of defendant Koons's own free will.

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[1] The court cannot determine from the record before it whether defendant Koons's statement made during the booking process that he used methamphetamine was in response to interrogation. The government bears the burden of proving by a preponderance of the evidence that a defendant's statements were not the product of a custodial interrogation. *See Miranda*, 384 U.S. at 475. Because the government has not met this burden here, this aspect of defendant Koons's motion is granted.

III. CONCLUSION

The court finds that the *Leon* good-faith exception to the exclusionary rule is applicable here with regard to the evidence seized pursuant to the search warrant executed on defendant Koons's residence, vehicle and person. With respect to defendant Koons's statement made during the booking process that he used methamphetamine, the court concludes that the government has not met its burden of proving by a preponderance of the evidence that this statement was not the product of a custodial interrogation. Therefore, this portion of defendant Koons's motion is **granted**. With respect to defendant Koons's other statements, the court concludes that no *Miranda* violation occurred. Finally, the court concludes that a preponderance of the evidence establishes that defendant Koons's statements were not compelled or coerced, but rather that they were given freely, voluntarily and of defendant Koons's own free will. Therefore, the court **grants in part and denies in part** defendant Koons's motion to suppress.

IT IS SO ORDERED.

DATED this 26th day of April, 2001.

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MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA